

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SHONECA DAVIS,  
DAWUD EUDELLE,  
JACLYN PAGNOTTA, and  
DAVID POMALES

08 CV 01859 (PKC) (AJP)

Individually and on behalf of all others similarly situated,  
And

KENNETH FINGERMAN,

Plaintiffs,

-against-

**DEFENDANTS' NOTICE  
OF MOTION FOR PARTIAL  
DISMISSAL OF PLAINTIFF'S  
COMPLAINT PURSUANT TO  
RULE 12(B)(1) OF THE  
FEDERAL RULES OF CIVIL  
PROCEDURE**

ABERCROMBIE & FITCH CO.  
ABERCROMBIE & FITCH STORES, INC.  
ABERCROMBIE & FITCH TRADING CO.  
d/b/a Abercrombie & Fitch,  
Abercrombie, Hollister and Ruehl,

Defendants.  
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PLEASE TAKE NOTICE that upon the affirmation of Stacia Marie Jones Esq., and the exhibits annexed thereto, and upon Defendants' Memorandum of Law in Support of this Motion for Partial Dismissal, Defendants will move before the Honorable Judge P. Kevin Castel United States District Judge at the United States Court House, 500 Pearl Street, New York, New York, on a date and at a time designated by the Court or as soon as counsel may be heard, for an Order pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, (a) dismissing with prejudice the claims of Plaintiffs Shoneca Davis, Dawud Eudelle, David Pomales and JacLyn Pagnotta ("Plaintiffs") brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216 et seq. for lack of subject matter jurisdiction; (b) declining to exercise supplemental jurisdiction over Plaintiffs'

claims brought pursuant to New York Labor Law §§ 650 et seq.; and (c) granting Defendants such other and further relief as this Court deems just and proper.

Pursuant to the Court's Scheduling Order, the Plaintiffs must respond to this Motion by September 1, 2008.

Dated: August 11, 2008

VORYS, SATER, SEYMOUR AND PEASE LLP  
Attorneys for Defendants

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was electronically filed through the Court's ECF system and served this 11<sup>th</sup> day of August, 2008 by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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